

EPA Office of Small Business Programs
(Formerly the Office of Small and Disadvantaged Business Utilization “OSDBU”)
New Disadvantaged Business Enterprise Program
“Increasing Opportunities for Disadvantaged Businesses under EPA Financial Assistance Agreements”

What is The Disadvantaged Business Enterprise Program?

- It is EPA's policy that recipients of EPA financial assistance through grants and cooperative agreements award a "fair share" of subagreements to small, minority and women-owned businesses. Since each is a separate entity, the objective is to assure that each of these business entities is given the opportunity to participate in subagreements awards under EPA financial assistance agreements. This policy applies to all subagreements for equipment, supplies, construction and services under all EPA grants, cooperative agreements, and IAGs.
- The EPA Office of Small Business Programs (OSBP) is responsible for establishing policy and providing procedural guidance for the utilization of small, minority and women-owned businesses under the Agency's financial assistance programs through its **Disadvantaged Business Enterprise (DBE) Program, formally the Minority Business Enterprise and Women-owned Business Enterprise Program (MBE/WBE)**.
- The DBE Program is an outreach, education, and goaling program designed to increase the participation of DBEs in procurements funded by EPA assistance agreements. The EPA DBE Program encompasses many of the components of the former MBE/WBE Program and includes many new features.

Why Does the Program Exist?

- The program was mandated by congress in response to the large number of procurement opportunities available through assistance agreements vs. Contracts. At EPA, assistance agreement dollars are approximately four times as much as contract dollars. The statutory authority for the program is as follows:
 - **Public Law 101-549, Nov 15, 1990 (clean air act):**
To the extent practicable, not less than 10% made available to DBEs.
 - **Public Law 102-389, Oct 6, 1992 (clean water act):**
To the fullest extent possible, at least 8% made available to socially and economically disadvantaged concerns, including HBCUs and women.

How We Achieve the Purpose of the Program?

Recipients of EPA financial assistance agreements are **required to seek**, and **encouraged to utilize** small, minority, and women-owned businesses for their procurement needs under the financial assistance agreement. This is done through the inclusion of terms and conditions in the financial assistance agreement. The key functional components of the DBE Program are as follows:

- **Fair Share Objectives**
- **Six Good Faith Efforts and Contract Administration Requirements**
- **MBE/WBE Reporting**
- **MBE/WBE Certification**

How does the new DBE Program compare with the old MBE/WBE Program in each functional component?

Overall

Old MBE/WBE Program

New DBE Program

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| Known as the Minority-Owned Business Enterprise and Women-Owned Business Enterprise (MBE/WBE) Program. | Now known as the Disadvantaged Business Enterprise (DBE) Program. MBEs and WBEs are a part of the larger universe of DBEs. |
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Fair Share Objectives

Old MBE/WBE Program

New DBE Program

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| Recipients must negotiate fair share objectives with the Agency. | Recipients must negotiate fair share objectives with the Agency. Proposed fair share objectives and supporting documentation must be submitted within 120 days after the acceptance of the assistance award. |
| For Superfund grants, fair share objectives must be negotiated before funds may be expended for procurement under the financial assistance agreement. | For all grants, fair share objectives must be negotiated before funds may be expended for procurement under the financial assistance agreement. |
| Fair share objectives must be based on an availability analysis, disparity study, or other supporting data and documentation. | No Change |
| Fair share objectives will remain in effect for 3 fiscal years, unless there are significant changes to the data supporting the fair share objectives. | No Change |
| Recipients may adopt the fair share objective of another recipient. | No Change. Recipients will affirm the acceptance of the other recipient's fair share objective in the grant terms and conditions. |
| No exemptions to the fair share objectives requirement. | <p>The following are exemptions from the fair share objective requirements:</p> <ul style="list-style-type: none"> • Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year. • Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B. <ul style="list-style-type: none"> – There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients. • Recipients of Technical Assistance Grants. |

The Six Good Faith Efforts and Contract Administration Requirements

| Old MBE/WBE Program | New DBE Program |
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| Following the “Six Affirmative Steps” under 40 CFR Part 31, and the Six Positive Efforts under 40 CFR Part 30 were required by all grantees. | The “Six Good Faith Efforts” combine the “Six Affirmative Steps” and the “Six Positive Efforts” and are still required by all grantees. The substance of the efforts has not changed. |
| No protections for DBE Subcontractors | Several mechanisms are in place to protect DBE Subcontractors: <ul style="list-style-type: none"> • 30 day payment provision, notifications of DBE terminations, and continuing the Six Affirmative Steps after termination of a DBE. • Completion of 3 new forms to prevent “bait and switch” tactics. None of these new forms are completed, or submitted by the grant recipient. These forms are filled out by the recipient’s prime contractors and subcontractors. |
| No mechanism for recipients to develop and maintain their own list of DBEs | Recipients are now required to create and maintain a bidders list. There is a \$250K exemption from this requirement. |

MBE/WBE Reporting

| Old MBE/WBE Program | New DBE Program |
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| All recipients, including Tribes and trust territories, must report MBE/WBE accomplishments on EPA Form 5700-52A. | No Change |
| <p>The following recipients report on an annual basis:</p> <ul style="list-style-type: none"> • Recipients of Continuing Environmental Program Grants under 40 CFR Part 35, Subpart A; • Recipients under 40 CFR Part 35, Subpart B; • General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and • Institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR Part 30. | No Change |
| <p>The following recipients report on a quarterly basis:</p> <ul style="list-style-type: none"> • Recipients of financial assistance agreements that capitalize revolving loan funds; and • All other recipients not specified as “annual reporters”. | Recipients who reported quarterly under the old program, now report on a semi-annual basis. |
| Self-certified MBEs and WBEs can be counted | MBEs and WBEs must be certified in order to be counted |

toward a recipient's accomplishments.

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MBE/WBE Certification

Old MBE/WBE Program

New DBE Program

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| MBEs and WBEs self-certify their status. | MBEs and WBEs must be certified by EPA, SBA, DOT, or by state, local, Tribal, or private entities whose certification criteria match EPA's. *States are not required to develop or implement a new certification program. |
| Self-certified MBEs and WBEs can be counted toward a recipient's MBE/WBE accomplishments when reporting on EPA Form 5700-52A | MBEs and WBEs must be certified in order to be counted toward a recipient's MBE/WBE accomplishments. |

Who do I contact for more information?

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